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Stimulus Package Includes Billions for Broadband

The American Recovery and Reinvestment Act (“Act”), a \$787 billion stimulus package recently signed into law by President Obama, includes \$7.2 billion in funding for broadband programs. The National Telecommunications and Information Administration (“NTIA”) received \$4.7 billion in funding and \$2.5 billion was appropriated to the U.S. Department of Agriculture (“USDA”) under the Rural Utilities Service (“RUS”) program. Applicants can only receive funds under one of the following two programs.

NTIA Broadband Technology Opportunities Program

- General Description of the Program:
 - \$4.7 billion primarily to award grants to develop and expand broadband services to rural and underserved areas.
- Distribution of the \$4.7 billion:
 - \$3.89 billion in grants for broadband deployment.
 - \$250 million to fund programs to encourage sustainable broadband services.
 - \$350 million to develop a broadband inventory map.
 - \$200 million to expanding public computer center capacity.
 - \$10 million to program oversight.
- Eligibility:
 - An applicant must be a:
 - state or political subdivision thereof.
 - a nonprofit foundation, corporation, institution, or association.
 - any other entity that NTIA finds by rule to be in the public interest.
 - Conference Report on the Act: “It is the intent of the Conferees that, consistent with the public interest and purposes of this section, as many entities as possible be eligible to apply for a competitive grant, including wireless carriers, wireline carriers, backhaul providers, satellite carriers, public private partnerships, and tower companies.”
 - An applicant shall submit an application to NTIA that:
 - provides a detailed explanation of how funds will be used
 - shows the project would not be implemented during the grant period without a grant.
 - demonstrates the applicant’s ability to complete the project.
 - demonstrates the applicant can fund at least 20% of the project
 - Generally, no more than 80% of the project can be funded by federal grants.
- Considerations in Awarding Grants:
 - NTIA should award at least one grant in each state.
 - Consider whether applicant is a socially and economically disadvantaged small business.

- Consider whether an application will, if approved:
 - provide access to broadband service to consumers in unserved or underserved areas.
 - increase affordability and subscribership to the greatest population of users in the area.
 - provide greatest broadband speed possible to greatest population of users in the area.
 - enhance service for health care delivery, education, or children to the greatest population of users in the area.
 - not result in unjust enrichment.
- NTIA Discretion:
 - Conference Report on the Act: “NTIA has discretion in selecting the grant recipients that will best achieve the broad objectives of the program. The Conferees also intend that the NTIA select grant recipients that it judges will best meet the broadband access needs of the area to be served, whether by a wireless provider, a wireline provider, or any provider offering to construct last-mile, middle-mile, or long haul facilities.”
- Permitted Projects:
 - Acquiring equipment, hardware and software for broadband service.
 - Constructing and deploying broadband service related infrastructure.
 - Constructing and deploying broadband facilities to improve public safety access.
- Non-Discrimination and Network Interconnection Obligations:
 - Shall be published concurrently with NTIA’s issuance of Requests for Proposals.
 - Shall be contractual conditions to receiving grants.
- Deadline
 - NTIA must distribute funds by October 1, 2010.
 - Recipients must substantially complete projects within two years of receiving funds from NTIA.
- Timelines
 - The program will be administered by the Assistant Secretary of Commerce for Communications and Information. President Obama recently named Gary Locke as his Commerce Secretary (subject to Senate approval). The Assistant Secretary has not yet been named.
 - At a recent conference, Blair Levin (former FCC Chief of Staff and advisor on Obama’s Transition Team) confirmed the President hopes NTIA will begin distributing funds by August.
 - NTIA held the first of several public meetings on March 10, 2009, to discuss the program.

USDA Rural Utilities Service Program

- General Description of the Program:
 - \$2.5 billion in grants, loans or loan guarantees to promote rural broadband deployment.
- Distribution of the \$2.5 billion:
 - All distributed in the form of grants, loans or loan guarantees as part of the USDA’s existing program started in 2002 that has approved 70 loans in 40 states totaling more than \$3 billion.
- Eligibility:

- Eligible Entity:
 - To receive a loan or loan guarantee, an entity shall:
 - have the ability to furnish, improve, or extend a broadband service to an Eligible Rural Community, and
 - submit an adequate proposal to the Secretary.
- Eligible Rural Community:
 - Any area of the U.S. that is not contained in an incorporated city or town with a population in excess of 20,000 inhabitants. state or political subdivision thereof.
- Considerations in Awarding Grants:
 - 75% of the area to be served must be in a rural area without sufficient access to broadband.
 - USDA has not yet determined “a rural area without sufficient access to broadband.”
 - Priority will be given to applicants that will:
 - provide service to unserved rural communities.
 - deliver users a choice of more than one service provider.
 - borrowers or former borrowers under the Rural Electrification Act.
 - provide service to highest proportion of users without broadband access.
 - be able to fully fund the project with USDA approval.
 - generally, no more than 80% of the project can be funded by federal grants.
 - commence work promptly.
- Program History:
 - Traditionally, the RUS application process has been difficult and slow. For example, by April 2007, the program had received nearly 200 applications. More than 100 of these applications were returned for a variety of reasons. The agency took, on average, more than 300 days to review applications.
 - The USDA’s application and reporting requirements are voluminous, and applicants are encouraged to work with a USDA staff member early in the process to ensure paperwork is properly completed.
 - At a recent conference, Blair Levin confirmed that the RUS program will become more user-friendly and transparent in awarding funds.
- Timelines
 - The USDA Secretary must submit a report to Congress by May 18, 2009, detailing planned spending and actual obligations. A similar report must be submitted quarterly until the funds are exhausted.
 - The RUS program is already established and may be able to distribute funds more quickly, however, the program does not have the same deadlines as the NTIA program.

FCC Narrowbanding Deadlines

On February 27, 2009, the Land Mobile Communications Council (“LMCC”) sent a letter to the FCC urging the agency to issue a Public Notice reminding licensees and frequency coordinators of the upcoming narrowbanding deadlines set by the Commission. The current deadline for Industrial/Business and Public Safety Radio Pool licensees in the 150-174 MHz and 421-512 MHz bands to migrate to 12.5 kHz or equivalent technology is January 1, 2013. By January 1, 2011, all applications to implement new systems in these bands must employ technologies that operate at 12.5 kHz.

The FCC plans eventually to require land mobile licensees to adopt 6.25 kHz technology, and released a Fourth Memorandum and Order on May 13, 2008, clarifying its plans to eventually require land mobile licensees in the 150-174 MHz and 421-512 MHz bands to adopt 6.25 kHz technology. Previously, the FCC had "urged" licensees to migrate to 6.25 kHz equipment by January 1, 2013, but had not established the date as a specific requirement, resulting in significant confusion among licensees already migrating to 12.5 kHz technology. The FCC's Order clarifies that the FCC will commence a rulemaking seeking comment on an appropriate 6.25 kHz deadline prior to announcing a 6.25 kHz migration date.

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